#### CODE OF PROBATE JUDICIAL CONDUCT

Reprinted from the
Connecticut Probate Practice Book,
Containing amendments approved
by the Connecticut Probate Assembly
and the Probate Court Administrator
in June 1998, January 2001, June 2001,
January 2006, June 2008 and January 2012

Published by Probate Court Administrator State of Connecticut

# The Connecticut Probate Practice Book is published by

## THE PROBATE COURT ADMINISTRATOR STATEOF CONNECTICUT

Hartford 1980

©Copyright 1996, 1994, 1992, 1990, 1988, 1985, 1980, 1977, 1973 Connecticut Probate Court Administrator

## **Table of Contents**

Introduction	1
Canons and Preamble	3
Terminology	5
Canon 1	8
Canon 2	8
Canon 3	11
Canon 4	24
Canon 5	32
Canon 6	38
Canon 7	38
Canon 8	38

#### PART III CODE OF PROBATE JUDICIAL CONDUCT

#### INTRODUCTION

The probate judges adopted the Code of Probate Judicial Conduct effective January 21, 1976, and the Probate Court Administrator approved the Code on January 23, 1976. The probate judges subsequently adopted amendments to the Code on April 28, 1980, November 29, 1984, and June 8, 1988. The Probate Court Administrator approved the amendments on the same dates.

On November 30, 1994, the probate judges adopted a complete revision of the Code as drafted by the Ethics Committee of the Connecticut Probate Assembly, with the exception of Canon 3, Section B(7), which deals with ex parte communications. The Probate Court Administrator approved the revised Code [with the exception of Canon 3, Section B(7)] on the same date. On January 10, 1996, the probate judges adopted Canon 3, Section B(7) as revised by the Ethics Committee and amended Canon 5, Section A(1)(a) and Section A(1)(f). The Probate Court Administrator approved the revision and these amendments on the same date.

In April 1997, the Ethics Committee drafted four revisions to Canon 5 of the Code pertaining to a judge's conduct during political campaigns. The probate judges adopted the Ethics Committee's revisions to Canon 5, Sections A (1)(c), A (1)(e), A(1)(j), and A(4) on November 20, 1997. The Probate Court Administrator approved the revisions on that same date. On June 10, 1998, the probate judges adopted a revision to Canon 3, Section C(3) that enacted rules concerning the paid employment of a judge's relatives in the judge's probate court or any other probate court. The Probate Court Administrator approved the revision on that same date.

On January 30, 2001, the probate judges amended the definition of "fiduciary" in the Preamble to add the relationship of "conservator." The Probate Court Administrator approved the revision on that same date. On April 12, 2001, the Ethics Committee approved a revision to Canon 3, Section E(3) with respect to a judge serving as a fiduciary in certain situations. On May 24, 2001, the Executive Committee approved the Ethics Committee's revision and added new language to Canon 3, Section E(3)(a). The probate judges adopted the Executive Committee's version of the revision on June 14, 2001, and the Probate Court Administrator approved it on that same date

On April 12, 2001, the Ethics Committee approved a revision to Canon 3, Section E(3) with respect to a judge serving as a fiduciary in certain situations. On May 24, 2001, the Executive Committee approved this revision and added new language to Canon 3, Section E(3)(a). The probate judges adopted the Executive Committee's version of the revision on June 14, 2001, and the Probate Court Administrator approved it on that same date.

In 2005, the Ethics Committee revised Canon 5, Section A(4) and its Commentary to clarify that not only campaign committees but also judges or judicial candidates may solicit statements of public support. The revised Commentary indicates that judicial candidates should arrange fundraising activities so as to minimize possible conflicts of interest with the judicial office. It also states that when a matter arises involving a party or attorney who previously made an allowable campaign contribution, the judge must consider whether the contribution might raise questions about his or her impartiality and thus be a cause for disqualification. The probate judges adopted the revisions to Canon 5, Section A(4) and its Commentary on January 25, 2006. The Probate Court Administrator approved the revisions on that same date.

On September 19, 2007, the Ethics Committee approved an amendment to Canon 4, Section D, relating to a judge's professional, financial, and business dealings with persons involved (or likely to be involved) in matters before the court. The amendment also prohibits a judge from purchasing real or personal property from an estate or trust over which the judge's court has jurisdiction except in very limited circumstances. The Executive Committee approved the amendment on January 18, 2008. The probate judges adopted the amendment on June 24, 2008, and the Probate Court Administrator approved the amendment on that same date.

The Ethics Committee approved three amendments to the Code on September 7, 2011. The first two amendments substituted the phrase "persons with intellectual disability" for "mentally retarded persons" in the Commentary for Canon 3, Sections B(7) and B(12). The third amendment added "gender, gender identity or expression, sexual orientation, ethnicity, and physical or mental disability" to the list of protected classes appearing in Canon 2, Section C, and its Commentary. The Executive Committee approved the amendments on October 12, 2011, and the probate judges adopted the amendments on January 11, 2012. The Probate Court Administrator approved the amendments on that same date.

PAUL J. KNIERIM
Probate Court Administrator

CANON 1 – A judge shall uphold the integrity and independence of the judiciary.

CANON 2 – A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

CANON 3 - A judge shall perform the duties of judicial office impartially and diligently.

CANON 4 - A judge shall so conduct all extra-judicial activities as to minimize the risk of conflict with judicial obligations.

CANON 5 - A judge or judicial candidate shall refrain from inappropriate political activity.

CANON 6 - Reports of compensation and income of judges of probate.

**CANON 7 – Guidelines of conduct.** 

**CANON 8 – Advance Rulings.** 

#### **PREAMBLE**

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Probate Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, an Application Section, and Commentary. The text of the Canons, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations, the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended

as hortatory and as a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Model Code of Judicial Conduct (August, 1990) was adopted by the House of Delegates of the American Bar Association on August 7, 1990. The general format of the 1972 ABA Code is retained. A Preamble and a Terminology section were added in the revision. An application Section follows the Canons.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and judicial candidates and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system. See ABA Standards Relating to Judicial Discipline and Disability Retirement<sup>1</sup>.

The Code of Probate Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards that should govern the conduct of all judges and to provide

<sup>&</sup>lt;sup>1</sup>Judicial disciplinary procedures adopted in the jurisdictions should comport with the requirements of due process. The ABA Standards Relating to Judicial Discipline and Disability Retirement are cited as an example of how these due process requirements may be satisfied.

guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

#### **TERMINOLOGY**

Terms explained below are noted with an asterisk (\*) in the Canons where they appear. In addition, references to the Sections where terms appear are listed following the explanation.

"Appropriate authority" denotes the authority with responsibility for initiation of the disciplinary process with respect to the violation to be reported. See Sections 3D(1) and 3D(2).

"Candidate." A candidate is a person seeking election to an office other than that of probate judge. (Compare with "judicial candidate.") See Section 5A.

"Court personnel" does not include the lawyers in a proceeding before a judge. See Sections 3B(7)(c) and 3B(9).

"De minimis" denotes an insignificant interest that could not raise reasonable questions as to a judge's impartiality. See Sections 3E(1)(c) and 3E(1)(d).

"Economic interest" denotes ownership of more than de minimis legal or equitable interest, or a relationship as officer, director, advisor, or other active participant in the affairs of a party, except that:

- (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund, or a proceeding pending or impending before the judge could substantially affect the value of the interest;
- (ii) service by a judge as an officer, director, advisor, or other active participant in an educational, religious, charitable, fraternal, or civic organization, or service by a judge's spouse, parent, or child as an officer, director, advisor, or other active participant in any organization does not create an economic interest in securities held by that organization;
- (iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary

interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

See Sections 3E(1)(c) and 3E(3).

"Election" denotes a primary, special, or general election, whether partisan or non-partisan, and whether or not there is a contest for the office sought between two or more *candidates* and/or judicial candidates. See Sections 5A(1) and 5A(5).

"Ex parte communication" denotes a written or oral communication between the judge and anyone else regarding a matter pending or impending before the judge's court, which communication is outside a noticed court hearing. See Section 3B(7).

"Fiduciary" includes such relationships as executor, administrator, conservator, trustee, and guardian. See Sections 3E(1)(c), 3E(2), 3E(3), and 4E.

"Judicial candidate." A judicial candidate is a person seeking selection for, or retention in, judicial office. A person becomes a judicial candidate as soon as he or she makes a public announcement of candidacy, declares or files as a judicial candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. See Preamble and Sections 5A and 5C.

"Knowingly," "knowledge," "known," or "knows" denote actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Sections 3C(3), 3D(1), 3D(2), 3E(1), 5A(2)(c), and 5A(2)(d).

"Law" denotes court rules as well as statutes, constitutional provisions, and decisional law. See Sections 2A, 3A, 3B(2), 3B(7), 3E(1)(b), 3E(1)(c), 4B, 4C(1), 4C(2), 4D(4)(a), 5A(3)(j), 5A(4), 5A(5), 5B(2), and 5B(3).

"Member of the judicial candidate's family" denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judicial candidate maintains a close familial relationship. See Section 5A(2)(a).

- "Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Section 4D(2).
- "Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Sections 3E(1)(c), 4D(4), and 4D(4)(b).
- "Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, information offered in psychiatric reports, and assessment teams' and physicians' reports. See Section 3B(10).
- "Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of *candidates* and/or judicial candidates to political office. See Sections 5A(1) and 5A(3)(d).
- "Political party" denotes a national or state political party or an organization affiliated with such a party. See Sections 5A(1) and 5A(3).
- "Require" The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Sections 3B(3), 3B(4), 3B(5), 3B(6), 3B(9) and 3C(2).
- "Third degree of relationship" The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece. See Section 3E(1)(d).

CANON 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.

**Section A**. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

**Commentary** – Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

**Section A**. A judge shall respect and comply with the law\* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

**Commentary** – Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful, although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code but shall not be interpreted to mean that a judicial decision may be reviewed by any reviewing body, except on appeal to a higher court. The test for appearance of impropriety is whether the conduct would create in reasonable

minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired. See also Commentary under Section 2C.

**Section B.** A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others, nor shall a judge convey, or permit others to convey, the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

Commentary – Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage, such as deferential treatment when he or she is stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. As to the acceptance of awards, see Section 4D(4)(a) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

**Section C.** A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, gender, gender identity or expression, sexual orientation, ethnicity, physical or mental disability.

Commentary — Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, national origin, gender, gender identity or expression, sexual orientation, ethnicity, physical or mental disability persons who would otherwise be admitted to membership.

Although Section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion, national origin, gender, gender identity or expression, sexual orientation, ethnicity, physical or mental disability, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the laws of the jurisdiction also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion, national origin, gender, gender identity or expression, sexual orientation, ethnicity, physical or mental disability in its membership or other policies or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Section 2A.

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make

immediate efforts to have the organization discontinue its invidiously discriminatory practices but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

CANON 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

**Section A. Judicial Duties in General.** The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law\*. In the performance of these duties, the following standards apply.

#### Section B. Adjudicative Responsibilities.

- (1) A judge shall hear and decide matters except those in which disqualification is required.
- (2) A judge shall be faithful to the law\*, shall maintain professional competence in the law, and shall faithfully comply with established continuing judicial education requirements.
- (3) A judge shall require\* order and decorum in proceedings before the judge. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.
- (4) A judge shall be patient, dignified, and courteous to litigants, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require\* similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

**Commentary** – The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or

socioeconomic status and shall not permit staff, court officials, and others subject to the judge's direction and control to do so. A judge shall refrain from speech, gestures, or other conduct that constitutes sexual harassment and must require\* the same standard of conduct of others subject to the judge's direction and control.

**Commentary** – A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give an appearance of judicial bias to parties or lawyers in the proceeding, the media, and others. A judge must be alert to avoid behavior that may be perceived as prejudicial.

- (6) A judge shall require\* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others. Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or other similar factors, are issues in the proceeding. A judge shall require lawyers in proceedings before the judge to refrain from speech, gestures, or other conduct that constitutes sexual barassment
- (7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law\*.
  - (a) A judge should discourage ex parte communications\* in all but administrative matters and shall not initiate them in any contested matter.
    - (i) If a matter is being contested, the judge shall reveal the general substance of the ex parte communication\* to the parties and their counsel attending the next court hearing OR notify all the parties and their counsel of the general substance of the ex parte communication promptly after receiving it, OR the judge shall seek recusal from the case.
    - (ii) If a matter is not being contested at the time the ex parte communication\* is received or initiated, but later becomes contested, the judge shall reveal the general substance of the relevant ex parte communication to the parties and their counsel attending the

next court hearing OR notify all the parties and their counsel of the general substance of the relevant ex parte communication promptly after receiving it, OR the judge shall seek recusal from the case.

- (iii) If and when a matter becomes contested, only those communications received after it becomes contested and those relevant communications received before it became contested need be disclosed, absent the judge's recusal.
- (iv) The proscription contained herein in reference to contested matters shall apply from the time any matter becomes contested until that matter is finally adjudicated or settled.
- (b) A judge may obtain the legal advice of a disinterested expert on the law applicable to any proceeding before the judge but shall not receive from such expert any other information related to a contested matter unless the judge gives notice to the parties of the person consulted and the substance of the communication and affords the parties a reasonable opportunity to respond.
- (c) A judge may consult with court personnel\* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges or with the office of the Probate Court Administrator.
- (d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.
- (e) A judge may initiate or consider any ex parte communications\* when expressly authorized by law\* to do so.

Commentary – The probate court, as it is constituted in Connecticut, is designed to provide service that is prompt and efficient, but also caring and understanding, in those areas in which it has jurisdiction. In recognition of this, the Canons are designed to permit the court to have before it all matters that will be helpful in the decision-making process. The court must use great discretion in receiving such communications, unless circumstances warrant, and must always attempt to avoid the reasonable appearance of impropriety.

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not

participants in the proceeding, except to the limited extent permitted. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. Whenever the presence of a party or notice to a party is required by Section 3(B)(7), it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

A judge may ask a party to submit proposed findings of fact and conclusions of law, as long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

Judges should make reasonable efforts to inform court staff of the importance of avoiding the transmittal of proscribed ex parte communications to the judge, recognizing, however, that it is virtually unavoidable for court personnel to receive ex parte communications, since the court cannot control, but only discourage, unsolicited communications, whether they be oral or written.

Traditionally, members of the public have always expected the probate court to be open and accessible to their concerns and views. Probate courts frequently receive unsolicited communications of a substantive nature, sometimes from the parties and occasionally from others who are concerned about the matter or person at issue. It is virtually impossible for the judge or the judge's staff to avoid such communications, no matter how much they are unwanted or discouraged. It may also happen that despite the judge's best efforts to discourage the receipt of ex parte communications, someone may send a confidential note to the judge, with strict instructions that the contents not be revealed. The judge may not realize this until the entire note is read, and there may be good reason to keep the information confidential. For example, it may come from a minor child whose guardianship matter is before the court, and it may reveal information of an extremely sensitive nature, which, if known by the guardians, could expose the child to imminent and grave risk. In such cases, if the matter raised is of a material and relevant nature, the judge may respect the confidentiality of the communication but recuse himself or herself from the case, or reveal the general substance of the communication to all parties and allow them to respond without recusal. If the confidentiality is respected, a written communication should be returned to the author, since, if left in the court file, it would be a matter of record for the parties, even if not for the public. If the communication is returned, the sender should be advised that the contents of the communication will not be considered by the court unless appropriately introduced before all interested parties.

Certain persons appearing before the court are agents of the court, such as conservators, guardians ad litem, and guardians of persons with intellectual disability. The nature of their responsibilities requires periodic access to the guidance and directives of the court without undue administrative burdens. However, once it becomes known to the judge that the matter for which the court's agent is seeking advice is contested, the proscriptions of the Canon shall apply, except when an emergency prevents compliance. In the event of such an emergency, the court shall attempt to give notice to all parties and counsel as soon thereafter as practical.

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

Commentary – In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs. A judge should use the judge's good offices to promulgate the expeditious settlement of all matters pending before the court, but parties should not be coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants, and their lawyers cooperate with the judge to that end.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair hearing. The judge shall require\* similar abstention on the part of court personnel\* subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining the procedures of the court for public information purposes. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

Commentary – The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in the official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Code of Professional Responsibility.

- (10) A judge shall not disclose, or use for any purpose unrelated to judicial duties, nonpublic information\* acquired in a judicial capacity.
- (11) Except as otherwise provided in this Canon, a judge should prohibit broadcasting, televising, recording, or taking photographs in the hearing room and areas immediately adjacent thereto during sessions of the court or recesses between sessions. A judge may authorize:
  - (a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;
  - (b) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:
    - (i) the means of recording will not distract participants or impair the dignity of the proceedings;
    - (ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;
    - (iii) the reproduction will not be exhibited until after the proceeding has been concluded, and all direct appeals have been exhausted.
- (12) The broadcasting, televising, recording, or photographing of court proceedings by news media will be allowed, subject to the limitations hereinafter set forth, in hearings and other proceedings in the probate court:
  - (a) A judge may permit broadcasting, televising, recording, or photographing of civil and criminal trials in hearing rooms of the probate court except as hereinafter excluded.

- (b) Any media or pool representative seeking permission to broadcast, televise, record, or photograph a hearing shall, at least three days prior to the commencement of the hearing, submit a written request to the judge of the probate court where the case is to be heard. A request submitted on behalf of a pool shall contain the name of each news organization seeking to participate in that pool. The judge shall approve or disapprove such request. Disapproval by the judge shall be final. Before the judge approves of such request, the judge shall be satisfied that the permitted coverage will not interfere with the rights of the parties to a fair hearing, but the right to limit coverage at any time in the interests of the administration of justice shall be reserved to such judge. Approval of the request, however, shall not be effective unless confirmed by the judge. Any news organization seeking permission to participate in a pool whose name was not submitted with the original request may, at any time, submit a separate written request to the judge and shall be allowed to participate in the pool arrangement only with the approval of the judge.
- (c) No broadcasting, televising, recording, or photographing of any of the following proceedings shall be permitted:
  - (i) All those matters specified in C.G.S. § 46b-1(6) and 46b-1(14)(a)-(f) over which courts of probate have jurisdiction;
  - (ii) Claims for paternity under C.G.S. § 46b-172a;
  - (iii) Guardianship of persons with intellectual disability under C.G.S. § 45a-668 et seq.;
  - (iv) Sterilization proceedings under C.G.S. § 45a-690 et seq.;
  - (v) Adoption Review Board proceedings under C.G.S. § 45a-763 et seq.;
  - (vi) Hearings of cases that must be closed to the public to comply with the provisions of state law;
  - (vii) All other matters within the jurisdiction of the probate court concerning children, incapable or disabled persons, as may be determined by the judges of the probate court, acting through the Connecticut Probate Assembly.

- (d) No broadcasting, televising, recording, or photographic equipment permitted under these rules shall be operated during a recess in the hearing.
- (e) No broadcasting or recording of conferences involving counsel and the judge or involving counsel and their clients shall be permitted.
- (f) The judge, using discretion and upon the judge's own motion, may prohibit the broadcasting, televising, recording, or photographing of any participant at the hearing. The judge may also, at the request of a participant, prohibit, in the judge's own discretion, the broadcasting, televising, recording or photographing of that participant at the hearing. The judge shall give great weight to requests where the protection of the identity of a person is desirable in the interests of justice. "Participant" for the purpose of this rule shall mean any party, lawyer, or witness.
- (g) Only one television camera operator, utilizing one portable mounted television camera or recording device, shall be permitted in the hearing room. The television camera and operator shall be positioned in such location in the hearing room as shall be designated by the judge. While the hearing is in progress, the television camera operator shall operate the television camera or recording device in this designated location only. Videotape recording equipment and other equipment that is not a component part of the television camera shall be located outside the hearing room. Only one still camera photographer, carrying not more than two still cameras with one lens for each camera shall be permitted in the hearing room. The still camera photographer shall be positioned in such location in the hearing room as shall be designated by the judge. While the trial is in progress, the still camera photographer shall photograph court proceedings from this designated location only. Only one audio system for broadcasting and recording purposes shall be permitted in the hearing room. Microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance by the judge.
- (h) No broadcasting equipment, television, or recording device, or recording or photographic equipment shall be placed in or removed from the hearing room while the court is in session.
- (i) Only still camera, television, and audio equipment that does not

produce distracting sound or light shall be employed to cover the hearing. The operator shall operate all such equipment in a manner that will not be distracting or interrupt court proceedings.

- (j) Participating members of the broadcasting, televising, recording, and photographic media shall make their respective pooling arrangements, including the establishment of necessary procedures and selection of pool representatives, without calling upon the court to mediate any dispute as to the appropriate media representative or equipment for a particular hearing. If any such medium shall not agree on equipment, procedures and personnel, the court shall not permit that medium to have coverage at the hearing.
- (k) Except as provided by these rules, established restrictions upon broadcasting, televising, recording, and photographing in areas adjacent to the hearing rooms shall remain in full force.
- (1) The conduct of all attorneys with respect to hearing publicity shall be governed by Rule 3.6 of the Code of Professional Responsibility.
- (m) To evaluate prospective problems where approval for broadcasting, televising, recording, or photographing of a hearing has been granted, and to ensure compliance with these rules during the hearing, a mandatory pre-hearing conference shall be held by the judge, attorneys, and media personnel. At such conference, the judge shall review these rules and set forth the conditions of coverage in accordance therewith.

## Section C. Administrative Responsibilities.

- (1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration and should cooperate with other judges and court officials in the administration of court business.
- (2) A judge shall require\* staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.
- (3) A judge, in the exercise of power of appointment, should appoint on the basis of merit, should avoid favoritism, and should make only those appoint-

ments that are necessary. The judge should not approve compensation of appointees beyond the fair value of services rendered. A judge shall not appoint or employ a relative in the judge's own court to a paid position; provided that this prohibition shall not apply to a judge's relative employed or engaged in the judge's own court prior to the effective date of this amendment, but this prohibition shall apply to all judges after January 1, 2003. In addition, a judge shall not advocate or participate in the appointment or employment, promotion, or advancement of the judge's relative in any other probate court. A relative may serve without compensation in the judge's court or any other court. For purposes of this "relative" means grandfather, grandmother, father, mother, husband, wife, son, daughter, grandson, granddaughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, brother-in-law, sister-in-law, stepfather, daughter-in-law. stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

**Commentary** – Appointees of a judge include assigned counsel and personnel such as clerks and secretaries. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3C(3).

(4) A judge should not permit court staff members to engage in any matter in any probate court in which the judge is not permitted to engage, either by these Canons, or by the General Statutes of the State of Connecticut.

**Commentary** – The purpose of this amendment to the Code, which was adopted by the Connecticut Probate Assembly on April 28, 1980, is to make it clear that court staff are bound by the same prohibitions as the judge when practicing in any court of probate. For example, a clerk of a probate court who is a practicing attorney may not appear in another court of probate in a contested matter. (C.G.S. § 45a-25.)

### Section D. Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge\* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.\*

- (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge\* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority\*.
- (3) Acts of a judge, in the discharge of disciplinary responsibilities required or permitted are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.
- (4) A judge should take or initiate appropriate measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

**Commentary** – Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

## Section E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

**Commentary** – Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the

basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

- (a) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge\* of disputed evidentiary facts concerning the proceeding.
- (b) The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law\* served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it.

**Commentary** – A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

- (c) The judge knows\* that he or she, individually or as a fiduciary\*, or the judge's spouse, parent, or child wherever residing, or any other member of the judge's family residing in the judge's household\*, has an economic interest\* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis\* interest that could be substantially affected by the proceeding.
- (d) The judge or the judge's spouse, or a person within the third degree of relationship\* to either of them, or the spouse of such a person:
  - (i) is a party to the proceeding, or an officer, director, or trustee of a party;
  - (ii) is acting as a lawyer in the proceeding;
  - (iii) is known\* by the judge to have a more than de minimis\* interest that could be substantially affected by the proceeding;
  - (iv) is to the judge's knowledge\* likely to be a material witness in the proceeding.

Commentary – The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not in and of itself

disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1) or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.

- (2) No judge of probate shall appear as an attorney or fiduciary\* in the court to which he or she was elected, notwithstanding the fact that another judge of probate has been cited in to hear the matter, provided, however, that acting as a fiduciary with respect to his or her spouse, child, parent, grandparent, brother, or sister shall not be so prohibited.
- (3) No judge of probate shall serve as a fiduciary or accept any appointment in any other probate court, provided, however, that a judge of probate may serve as a fiduciary with respect to his spouse, child, parent, grandparent, brother, sister, aunt, uncle, niece, or nephew. Notwithstanding the foregoing, a judge of probate may serve as a fiduciary in another probate court in the following situations:
  - (a) if designated as such by the terms of a will duly admitted to probate or a properly executed designation of conservator;
  - (b) if nominated as a voluntary conservator, and no interested party objects;
  - (c) if nominated in an application for involuntary conservatorship, and all interested parties consent in writing, and the sitting judge concurs in the nomination:
  - (d) any other fiduciary position if all interested parties consent in writing.
- (4) A judge shall keep informed about the judge's personal and fiduciary\* economic interests\* and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

CANON 4. A Judge Shall So Conduct the Judge's Extra-judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations.

**Section A. Extra-judicial Activities in General.** A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge,
- (2) demean the judicial office, or
- (3) interfere with the proper performance of judicial duties.

Commentary – Complete separation of judges from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives. Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions that may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status. See Section 2C and accompanying Commentary.

**Section B. Avocational Activities.** A judge may speak, write, lecture, teach, and participate in other extra-judicial activities concerning the law\*, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of this Code.

**Commentary** – As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through the bar association, judicial conference, or other organizations dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary, and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, most notably in connection with a judge's governmental, civic, or charitable activities. This phrase is included to remind judges that the

use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

### Section C. Governmental, Civic or Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law\*, the legal system, or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests. This shall not prohibit a judge from appearing before such bodies in a representative capacity, provided such judge does not use the prestige of the judge's office.

**Commentary** – See Section 2B regarding the obligation to avoid improper influence.

(2) A judge may serve as an officer, director, trustee, or non-legal advisor of an organization or governmental agency devoted to the improvement of the law\*, the legal system, or the administration of justice or of an educational, religious, charitable, fraternal, or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

**Commentary** – Section 4C(2) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system, or the administration of justice. See Section 4B Commentary regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(2) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge. Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C.

- (a) A judge shall not serve as an officer, director, trustee, or non-legal advisor if it is likely that the organization:
  - (i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member.

Commentary — The changing nature of some organizations and of their relationship to the law makes it necessary for a judge to regularly reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions, charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

- (b) A judge as an officer, director, trustee, or non-legal advisor or as a member or otherwise:
  - (i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities;
  - (ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law\*, the legal system or the administration of justice;
  - (iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4C(2)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;
  - (iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

Commentary – A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice or a nonprofit educational, religious, charitable, fraternal, or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct individual solicitation of

funds or memberships in person, in writing, or by telephone except in the following cases: 1) a judge may solicit other judges over whom the judge does not exercise supervisory or appellate authority for funds or memberships, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court in which the judge serves, and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fund-raising or membership solicitation does not violate 4C(2)(b), provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise. A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code. Use of the judge's name in general media advertising or press coverage or the judge's taking part, as a member of an organization at a public gathering, in the announcement and/or encouragement of member or fund solicitation shall not be deemed to violate this section, **provided there is no designation of the judge's judicial status in connection with any of these activities**.

## Section D. Professional, Financial, and Business Dealings.

(1) A judge shall refrain from professional, financial, and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judge's judicial duties, or exploit the judge's judicial position.

**Commentary** – When a judge acquires information in a judicial capacity, such as material contained in filings with the court that is not yet generally known, the judge must not use the information for private gain. See Sections 2B and 3B(10).

A judge must avoid professional, financial, and business dealings that involve the judge in frequent transactions or continuing relationships with a person who is involved in a pending matter in the judge's court or with a person whom the judge knows is likely to be involved in a matter in the judge's court in the near future. This rule applies to all forms of dealings in which the judge supplies or purchases goods, or renders or obtains services, to or from any such person. The rule also applies to all dealings in which the judge has an interest, including transactions involving an entity in which the judge has an interest. In addition, a judge shall prohibit court employees and should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, see Commentary to Section 3E(1) relating to disqualification.

A judge must determine whether the existence or the nature of any professional, financial, or business relationship warrants disclosure of the relationship to counsel and parties or disqualification from the matter. The factors that a judge should consider in making these determinations include the following: 1) the frequency and regularity of dealings, 2) the pecuniary or non-pecuniary value of the dealings, 3) the length of time the relationship has existed, 4) the proximity in time since the most recent transaction, 5) the probability of additional dealings, 6) the significance of the interest of a person with whom the judge has a relationship in the matter, and 7) whether the matter before the court, or any issue arising during the matter, is contested.

Participation by a judge in professional, financial, and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Section 4B regarding use of the phrase "subject to the requirements of this Code."

Section 4D(1) is not intended to prohibit a judge who maintains a private law practice from representing a client in a matter in which another party is represented by an attorney who has a matter in the judge's court. For example, a judge in his or her private law practice may represent a buyer in a real estate transaction even if the attorney representing the seller is handling a matter pending in the judge's court. Similarly, a judge is not prohibited from representing a client in a proceeding in the superior court when opposing counsel has a matter pending in the judge's court.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family\*, including real estate, and engage in other remunerative activity including the operation of a business or profession.

**Commentary** – This Section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

- (3) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.
- (4) A judge shall not accept and shall urge members of the judge's family residing in the judge's household\* not to accept, a gift, bequest, favor, or loan from anyone except for:

**Commentary** — Section 4D(4) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5. Because a gift, bequest, favor, or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

(a) a gift incident to a public testimonial; books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law\*, the legal system, or the administration of justice;

**Commentary** – Acceptance of an invitation to a law-related function is governed by Section 4D(4)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(4)(h). A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not

an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 2B and 4A(1).

- (b) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member of a judge residing in the judge's household\*, including gifts, awards, and benefits for the use of both the spouse or other family members, and the judge (as spouse or family member), provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;
- (c) ordinary social hospitality;
- (d) a gift from a relative or friend for a special occasion, such as a wedding, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship;

**Commentary** – A gift to a judge or to a member of the judge's family living in the judge's household that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(4)(e).

- (e) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would, in any event, require disqualification under Section 3E;
- (f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;
- (g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or
- (h) any other gift, bequest, favor, or loan, only if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.

**Commentary** – Section 4D(4)(h) prohibits judges from accepting gifts, favors, bequests, or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests, or loans from

clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

- (5) A judge shall not purchase any property, real or personal, from any estate or trust over which the judge's own court is presently exercising jurisdiction, even if another judge has been cited in to hear matters related to the estate or trust. Notwithstanding the foregoing, a judge may, following the judge's disqualification from the matter, purchase property from an estate under the following circumstances:
  - (a) the estate is that of the judge's spouse, child, parent, grandparent, brother, or sister; or
  - (b) the judge possessed the right to purchase the property under the terms of a contract or option that was legally enforceable prior to the establishment of the estate.

Commentary – The prohibition on purchasing property from an estate or trust under the supervision of the judge's court applies whether or not the judge has disqualified himself or herself from the matter. The narrow exceptions that are permitted are designed to avoid hardship to a judge when the matter involves the judge's own family or when the judge has entered into a contract to purchase a property before the event triggering the establishment of an estate arose. A judge should not become a party to any such contract if it appears at the time of entering into the contract that any other party to the transaction is likely to be involved in a matter in the judge's court within the near future.

**Section E. Fiduciary Activities.** A judge may serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary\* only if such service will not interfere with the proper performance of judicial duties.

**Commentary** – The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings, the retention of which would place the judge in violation of Section 4D(3).

CANON 5. A Judge or Judicial Candidate\* Shall Refrain from Inappropriate Political Activity.

### Section A. All judges and judicial candidates\*.

- (1) Except as authorized in Sections 5A(3) and 5A(5), a judge or a judicial candidate\* shall not:
  - (a) become an officer in or make a speech on behalf of a political organization\* or a political party\*. General comment in keeping with the dignity of the office of the judge of probate regarding party affiliation and principles and reference to *candidates*\* of the judge's political party shall not be considered speeches for a political organization or a political party.
  - (b) publicly endorse or publicly oppose another *candidate\** for public office (except the office for which a judge may be campaigning on his or her own behalf) or political party\* office in a speech, public advertisement, political advertisement, a broadcast, campaign literature, or similar material, provided, however, that general comment in keeping with the dignity of the office of judge regarding party affiliation and principles and reference to other members of the same ticket in a judge's or judicial candidate's\* own election\* campaign shall not be prohibited.

**Commentary** – The prohibition against endorsing a *candidate* applies equally to endorsement by a retiring judge of a judicial candidate to succeed him or her; retiring judges are bound by the Code until they actually retire. This Canon prohibits direct or public assistance to other *candidates* in the form of endorsements, speeches and the like. However, referring to *candidates* of a judge's own political party in a favorable light and in an appropriate manner such as at political rallies and gatherings shall not be prohibited.

(c) directly solicit, receive, collect, handle, disburse, or account for assessments, contributions, or other funds for a political purpose.

**Commentary** – This Canon prohibits direct solicitation but does not prevent a judge from assisting in fund-raising activities, although the judge should certainly never use the prestige of the judge's office for such fund-raising. The judge may be a member of a finance committee that organizes financial drives so long as the judge's name is not used to solicit funds. Such activities as selling tickets

to political dinners and the like are considered direct solicitation and are therefore prohibited.

(d) organize and reorganize a political organization\*, a political party,\* or an organization affiliated with a political organization or political party.

**Commentary** – Although this rule prohibits a judge from being the prime mover in organizing or reorganizing a political organization or a political party, it should not be construed to prevent a judge from working to improve or revitalize a political group of which the judge is a member.

(e) take any part in managing the political campaign of a *candidate*\* for public office or political party\* office.

Commentary – This Canon prohibits a judge from being active in managing a political campaign of a *candidate* but would not prevent the judge from assisting the members of such party in political campaigns so long as such assistance is consistent with the dignity of the office of judge and that the judge's name is not used in any manner that would indicate to the public that the judge is assisting or endorsing such *candidate*. "Managing a political campaign" means taking an active leadership role in the organization, planning, or execution of another's political campaign, but it does not include giving occasional advice or attending occasional organizational meetings. Even if another person should be the effective manager of a political campaign, a judge should never allow the use of his or her name as the nominal or honorary manager of such a campaign.

(f) become a candidate\* for public office in an election.\*

**Commentary** – For the purpose of this Canon, running for town committee membership is not considered becoming a *candidate* for public office.

- (g) act as election\* moderator, recorder, watcher, challenger, or similar officer at the polls during an election.
- (h) work as a driver transporting voters to the polls during an election\*.
- (i) initiate or circulate a nomination petition, except his or her own.

(j) place a sign or sticker supporting another *candidate\** on his or her real or personal property, except that this prohibition shall not abridge the right of a co-owner of such property to do so.

**Commentary** – Although a judicial candidate should not be able to control or limit the exercise of free speech by others, whether or not in a political campaign, the judicial candidate should inform co-owners of the property of the possible appearance of impropriety if they engage in political activities from which the judicial candidate is prohibited.

#### (2) A judicial candidate\*:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary and shall encourage members of the judicial candidate's family\* to adhere to the same standards of political conduct in support of the judicial candidate\* as apply to the judicial candidate;

**Commentary** – Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the judicial candidate that apply to the judicial candidate, family members are free to participate in other political activity.

- (b) shall prohibit employees and officials who serve at the pleasure of the judicial candidate\* and shall use the judicial candidate's best efforts to prevent other employees and officials subject to the judicial candidate's direction and control from doing on the judicial candidate's behalf what the judicial candidate is prohibited from doing under the Sections of this Canon:
- (c) except to the extent permitted by Section 5B(2), shall not authorize or knowingly\* permit any other person to do for the judicial candidate\* what the judicial candidate is prohibited from doing under the Sections of this Canon:

#### (d) shall not:

(i) make statements that commit or appear to commit the judicial candidate\* with respect to cases, controversies, or issues that are likely to come before the court, or

(ii) knowingly\* misrepresent the identity, qualifications, present position, or other facts concerning the judicial candidate\* or an opponent.

Commentary – Section 5A(2)(d) prohibits a judicial candidate from making statements that appear to commit the judicial candidate regarding cases, controversies, or issues likely to come before the court. As a corollary, in any public statement, a judicial candidate should emphasize the judicial candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. This Section does not prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the ABA Model Rules of Professional Conduct.

- (e) may respond to personal attacks or attacks on the judicial candidate's\* record as long as the response does not violate Section 5A(2)(d).
- (3) A judge or a judicial candidate\* may, except as prohibited by law\*:
  - (a) at any time:
    - (i) purchase tickets for and attend political gatherings,
    - (ii) identify himself or herself as a member of a political party\*; and
    - (iii) contribute to a political organization\*.
  - (b) display a political picture, sticker, badge, or button supporting his or her own candidacy only, except while performing any judicial function. No such picture, sticker, badge, or button shall be displayed in probate court facilities.

**Commentary** – Nothing herein shall prohibit a judge or judicial candidate from appearing in photographs or displays with other candidates of his own political party during his or her own election campaign.

- (c) participate in the nonpartisan activities of a civic, community, social, labor, or professional organization and participate in its activities to the extent consistent with the law\*.
- (d) be a member of a political party\*, local committee of a political party, or other political organization\* and participate in its activities to the extent consistent with the law\*.
- (e) attend a political convention, rally, fund-raising function, or other political gathering.
- (f) sign a political petition as an individual.
- (g) make a financial contribution to a political organization\* or a political party\* or a committee for an individual *candidate*\* or a judicial candidate\*.
- (h) when a judicial candidate\*:
  - (i) speak to gatherings on his or her own behalf;
  - (ii) appear in newspaper, television, and other media advertisements supporting his or her candidacy;
  - (iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy.

**Commentary** – Section 5A(3) permits judges subject to election to be involved in limited political activity at any time. Section 5B, applicable solely to incumbent judges, would otherwise bar this activity.

- (i) be politically active in connection with a question that is not specifically identified with a political party,\* such as a constitutional amendment, referendum, approval of a municipal ordinance, or any other question or issue of a similar character.
- (j) otherwise participate fully in public affairs, except as prohibited by law\*, in a manner that does not materially compromise the impartiality, efficiency, or integrity of the office of judge.

**Commentary** – The above list of acceptable political activities is not intended to be all-inclusive but rather indicates the types of activities that are not considered inappropriate to the judge's judicial office. In case of doubt as to the permissibility of an activity not listed above nor specifically prohibited in Section 5A, a judge may request an advance ruling per Canon 8 below.

(4) A judicial candidate\* shall not personally solicit or accept campaign contributions. A judicial candidate may, however, establish committees of responsible persons to conduct campaigns for the judicial candidate through media advertisements, brochures, mailings, judicial candidate forums, and other means not prohibited by law.\* Such committees may solicit and accept reasonable campaign contributions and manage the expenditure of funds for the judicial candidate's campaign. A judicial candidate shall not use or permit the use of campaign contributions for the private benefit of the judicial candidate or others. A judicial candidate or a committee acting on his or her behalf may solicit public statements of support for the judicial candidate's candidacy.

Commentary - Section 5A(4) seeks to balance the recognition that a judicial candidate\* may need to raise funds to support his or her candidacy against the legitimate concern about a judge's impartiality when parties whose interests may come before the judge, or lawyers who represent such parties, are known to have made contributions to the election campaigns of the judge. Section 5A(4) prohibits a judicial candidate from making any personal solicitation of funds but permits a judicial candidate to establish campaign committees to solicit and accept reasonable financial contributions. In order to guard against the possibility that conflicts of interest will arise, at the start of the campaign, the candidate must instruct his or her campaign committee to solicit or accept only contributions that are reasonable under the circumstances. Campaign committees established under section 5C(2) must at all times comply with applicable statutory provisions governing their conduct. Though not prohibited, campaign contributions made by parties or lawyers, may, by virtue of their size, source, or timing, raise questions about a judge's impartiality and be cause for disqualification under Section 3E.

(5) Except as prohibited by law\*, a judicial candidate\* in an election\* may permit the judicial candidate's name: (a) to be listed on election materials along with the names of other *candidates*\* for elective public office, and (b) to appear in promotions of the ticket.

**Commentary** – Section 5A(5) provides a limited exception to the restrictions imposed by Section 5A(1).

**Section B. Incumbent Judges.** A judge shall not engage in any political activity except:

- (1) as authorized under any other Section of this Code;
- (2) on behalf of measures to improve the law\*, the legal system, or the administration of justice; or
- (3) as expressly authorized by law\*.

**Commentary** – Neither Section 5B nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

**Section C. Applicability.** Canon 5 generally applies to all incumbent judges and judicial candidates\*. A successful judicial candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful judicial candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct.

## CANON 6. Reports of Compensation and Income of Judges of Probate

Whenever a complaint is made to the Council on Probate Judicial Conduct involving an alleged conflict of interest or impropriety of a financial nature in a matter being handled by a judge of probate, the judge shall, upon the written request of such Council, furnish such financial information under oath as may be pertinent to the alleged conflict or impropriety as determined by said Council.

### CANON 7. Guidelines of Conduct

The Ethics Committee of the Connecticut Probate Assembly shall establish and publish, subject to the approval of the Executive Committee of the Connecticut Probate Assembly, guidelines of conduct for judges under this Code of Probate Judicial Conduct.

#### CANON 8. Advance Rulings

A judge or judicial candidate\* may request a ruling on a proposed specific activity under any of the above Canons, in advance of performing said activity, from a Committee made up of the Probate Court Administrator, the President-Judge of the Connecticut Probate Assembly, and the Executive Secretary of the Connecticut Probate Assembly. In the event of the disqualification of any of said Committee members, a substitute shall be selected by the Executive Committee of the Connecticut Probate Assembly. Such request for ruling shall be submitted in writing to the Probate Court Administrator who shall call a meeting of said Committee within five days after receipt thereof, and the Committee shall issue a ruling within ten days after receipt of such request, unless such ruling is needed in a lesser time because of the imminence of the activity.

## PLEASE NOTE THE FOLLOWING PROVISIONS OF THE CONNECTICUT GENERAL STATUTES:

- C.G.S. § 45a-25. Probate judge not to appear as attorney in contested matter in probate court. (a) A judge of probate shall not appear as attorney in any contested matter in any court of probate.
- (b) For the purposes of subsection (a) of this section, a matter before a court of probate is a contested matter when any party to such matter informs the court, orally or in writing, of any objection or opposition in such matter, without regard to the apparent merit or lack of merit of such objection or opposition.
- (1971, P.A. 78, S. 2; P.A. 80-476, S. 12; P.A. 04-142, S. 1.) *History:* P.A. 80-476 reworded provision but made no substantive change; Sec. 45-11b transferred to Sec. 45a-25 in 1991; P.A. 04-142 designated existing provisions as Subsec. (a) and added Subsec. (b) re when matter before court is a contested matter.
- C.G.S. § 45a-26. Partner or associate of probate judge not to practice law in judge's court. A partner or associate of a judge of probate shall not engage in the practice of law in the court of probate in which such judge holds office. For the purposes of this section, any person who acts in a fiduciary capacity with respect to his spouse, child, parent, grandparent, brother, sister, aunt, uncle, niece or nephew shall not be construed to be engaged in the practice of law. (1971, P.A. 78, S.1; P.A. 73-487; P.A. 80-476, S. 13.) *History:* P.A. 73-487 specified that persons acting as fiduciaries for relatives shall not be construed as practicing law; P.A. 80-476 reworded provisions but made no substantive change; Sec. 45-11c transferred to Sec. 45a-26 in 1991.

## NOTES